

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
PENNSYLVANIA

CARRIE SUMMERVILLE	)	CIVIL DIVISION
	)	
Plaintiff,	)	No. 09-3261
	)	
v.	)	
	)	
PROGRESSIVE SPECIALTY	)	
INSURANCE COMPANY,	)	
	)	
Defendant.	)	

**STIPULATION TO WAIVE SUBROGATION**

NOW, this 13<sup>th</sup> day of August, 2009, Carrie Summerville and Progressive Specialty Insurance Company, hereinafter referred to as "Progressive", hereby declare the following:

WHEREAS, Carrie Summerville was a passenger in a vehicle operated by Bertha Johnson on November 22, 2007 when the Johnson vehicle was involved in an accident with a vehicle operated by Brahim Epps; and

WHEREAS, the vehicle being operated by Brahim Epps was insured by Allstate Insurance Company and had liability insurance limits of \$15,000 per person; and

WHEREAS, the vehicle being operated by Bertha Johnson, in which Carrie Summerville was a passenger, was insured by Progressive Specialty Insurance Company, policy no. 17407878-0 ("Policy"), with liability insurance limits of \$50,000 per person and underinsured motorist coverage of \$50,000 per person; and

WHEREAS, Carrie Summerville is an insured under the Policy for the November 22, 2007 accident; and

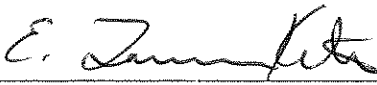
WHEREAS, Brahim Epps and Allstate Insurance Company have offered the liability limits of the Epps policy in exchange for a full and final General Release of Carrie Summerville's claims against Brahim Epps;


NOW THEREFORE:

Carrie Summerville and Progressive, intending to be legally bound, hereby stipulate and agree as follows:

- a. That Carrie Summerville has fully complied with the terms and conditions of the consent to settle and subrogation provisions of the Johnson Policy, which provides underinsured motorist coverage to Summerville;
- b. Progressive consents to Carrie Summerville giving to Brahim Epps and Allstate Insurance Company a full and final release in settlement of Carrie Summerville's claims against Brahim Epps and Allstate Insurance Company;
- c. That Brahim Epps was solely responsible for causing the automobile collision of November 22, 2007;
- d. Progressive waives its right to subrogation against Brahim Epps in any way arising out of the automobile collision of November 22, 2007;
- e. Progressive consents to the discontinuance of the third party action of Carrie Summerville against Bertha Johnson, without prejudice to Carrie Summerville's rights to proceed with her claim for underinsured motorist benefits; which claim is the subject of a separate lawsuit by Carrie Summerville against Progressive, commenced in the Court of Common Pleas of Philadelphia County at June term, 2009, No. 3633, and removed to the United States District Court for the Eastern District of Pennsylvania;

- f. Progressive waives any right to subrogation which it now has or may hereafter acquire against Bertha Johnson in any way arising out of the automobile collision of November 22, 2007;
- g. The execution of this Stipulation constitutes Progressive's written consent for the insured, Carrie Summerville, to settle her claims for damages against Brahim Epps and Bertha Johnson;
- h. Progressive waives as a defense Carrie Summerville's failure to exhaust her third-party claims and/or protect Progressive's right to subrogation and/or obtain written consent to settle from Progressive in any future proceeding by Carrie Summerville to collect underinsured motorist benefits;
- i. Progressive is entitled to a credit in the amount of \$15,000 against any award of underinsured motorist benefits;
- j. Progressive grants permission to Carrie Summerville to dismiss in its entirety, with prejudice, the action started at Summerville v. Johnson, et al., Court of Common Pleas of Philadelphia County, docket no. 080904049, without prejudice to Summerville's right to pursue her claim for UIM benefits up to \$50,000, with a credit in the amount of \$15,000 against any gross award of underinsured motorist benefits.

  
E. LAURENCE KATES, ESQUIRE  
Co-counsel for defendant,  
Progressive Specialty Insurance Company

  
DANIEL M. JAFFE, ESQUIRE  
Attorney for plaintiff, Carrie  
Summerville